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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 22-01142-mg

5 - - - - - x

6 In the Matter of:

7
8 CELSIUS NETWORK, LLC,

9

10 Debtor.

11 - - - - - x

12 AD HOC GROUP OF CUSTODIAL ACCOUNT HOLDERS,

13 Plaintiff,

14 v.

15 CELSIUS NETWORK, LLC, et al,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, NY 10004

21

22 October 7, 2022

23 10:03 A.M.

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Page 2

1 B E F O R E :
2 HON MARTIN GLENN
3 U.S. BANKRUPTCY JUDGE
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5 ECRO: KS
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1 HEARING re 22-01142-mg Ad Hoc Group of Custodial Account
2 Holders v. Celsius Network LLC et al Pre-trial Conference
3 Using Zoom for Government. (Doc ## 1 to 4, 6, 7, 8)
4

5 HEARING re Hearing Using Zoom for Government RE: Ad Hoc
6 Group of Withhold Account Holders Motion for Relief from The
7 Automatic Stay. (Doc# 737, 745, 857, 914, 937, 951, 954,
8 984)
9

10 HEARING re Hearing Using Zoom for Government RE: Debtor's
11 Motion Seeking Entry of an Order (I) Authorizing the Debtors
12 to Reopen Withdrawals for Certain Customers with Respect to
13 Certain Assets Held in the Custody Program and Withhold
14 Accounts and (II) Granting Related Relief. (Doc# 670, 725,
15 753, 857, 914, 933, 937, 951, 984)
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25 Transcribed by: Sonya Ledanski Hyde

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2 JOEL ANTHONY
3 RICHARD ARCHER
4 SAMUEL D. ARGIER
5 JULIEN ARSENAULT
6 RAMZI AUDEH
7 JESUS AYALA, JR.
8 NEGISA BALLUKU
9 BRIAN BARNES
10 NICOLE BARSTOW
11 MALCOLM M. BATES
12 ROBERT BEAULAC
13 CHRIS BECIN
14 BEN R BEN EADES
15 AARON BENNETT
16 JARNO BERG
17 FRANK BERTRAMS
18 CHERYL BIERBAUM
19 BRIANNA B. BILTER
20 EDWARD G. BIRCH
21 SOMA BISWAS
22 REED BOERBOOM
23 JARED C. BORRIELLO
24 JOSEPH BOTROS
25 HENRY BOUCHOT

1 OCTAVE J. BOURGEOIS
2 JEFFREY BRADIAN
3 PHILIP BRENDDEL
4 HEINZ BRENIG
5 NURALDEEN BRIFKANI
6 ADAM BRISTOW
7 JOHAN BRONGE
8 JOSEPH BROWN
9 VERA BROWN
10 AMY CASTOR
11 CAROLYN CHAMBERLAYNE
12 EDWARD CHAMPIGNY
13 ERIC CHAN
14 RICKIE CHANG
15 IMRAN CHAUDHRY
16 ESME CHIN
17 EDMOND CHIU
18 ROB CHRISTIANSEN
19 JEFFREY CHUBAK
20 MAYO CID
21 GEOFFREY CIRKEL
22 BERNIE CLICK
23 ROBERT J COMINOS
24 HOLLACE T. COHEN
25 MICHAEL CONLON

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2 KAREN CORDRY
3 CARL COTE
4 SCOTT CRAIG
5 OONA CRUSELL
6 PAUL CUPP
7 RANIERO D'AVERSA
8 ZURY DABBAH
9 DAVID DALHART
10 JOSH DAUM
11 STEFFAN DAVIES
12 SALVATORE DE MARIA
13 GEAN CARLOS DE OLIVEIRA BRINKER
14 STEPHEN DREIKOSEN
15 ZARYN A DENTZEL
16 ROMA N. DESAI
17 TRISTAN DIAZ
18 ANDREW G. DIETDERICH
19 JOSEPH DIEUJUSTE
20 JON DIMETROS
21 STEVEN DIODONET
22 DANIEL J. DION
23 DREW DUFFY
24 DENNIS DUNNE
25 JOHN P. DZARAN

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3 DANIEL EGGERMANN
4 SIMON ELIMELECH
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7 LISA FAUCHER
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9 DAVID FEINMAN
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15 LARRY FULTON
16 REBECCA GALLAGHER
17 CHRISTOPHER GASTELU
18 UTSAV GHOSH
19 BRADLEY GIARDIELLO
20 RYAN GILLIGAN
21 BRIAN D. GLUECKSTEIN
22 RYAN GOLDSTEIN
23 BRUNO GOMES
24 RAMON GONZALES
25 TODD GORDON

1 UDAY GORREPATI
2 THOMAS HALL
3 PHILIP HARDING
4 TAYLOR HARRISON
5 PHILIPPE HEGI
6 JULIE HENRY
7 JEREMY HILL
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13 ANDREW HUGGETT
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15 MAX JACKSON
16 ROBERTO JACOBS
17 KRAIG JAKOBSEN
18 ALI JAMSHID FAR
19 JANKO JANKOVIC
20 HECTOR JARRET
21 AROON JHAMB
22 RAUL JIMENEZ
23 LEIGH JOHANNSEN
24 KATHERINE JOHNSON
25 GREG KACZKOWSKI

1 CHEREE KAHRS
2 DAN KAPLAN
3 LORETA KASH
4 AISLINN KEELY
5 JOHN R. KEMENOSH
6 MIKAELA KENSINGTON
7 FARSHID KHALILI
8 FABIAN MATHIAS KHNLEIN
9 CRYSTAL KIM
10 RON KIRBY
11 CHRIS KOENIG
12 JEREMY FRANCIS KOO
13 MARY KORDOMENOS
14 TOMAS KSTER
15 KAY KUEHNE
16 MEI PO PO KWOK
17 CHRISTOPHER LACKEY
18 SMILE LASISI
19 JEAN-PHILIPPE LATREILLE
20 ANDREW LEBLANC
21 JOE LEHRFELD
22 KAREN LEUNG
23 RYAN WYMN LEWIS DAVIES
24 SETH H. LIEBERMAN
25 CHEYENNE LIGON

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2 JESSICA LJUSTINA
3 ISAAC R. LLEWELLYN
4 GINA LOCKWOOD
5 PATRICK LONEY
6 EDMUNDO LOPEZ
7 RUBAN LOPEZ
8 DAVID LOS ARCOS CARCAMO
9 JESSE LUND
10 JOHN LY
11 LAURA LY
12 DAVE MALHOTRA
13 KEVIN M. MANUS
14 KEVIN MARCELISSEN
15 DANIEL J. MAREE
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17 CHASE MARSH
18 KYLE MASON
19 DIANE MATTHEWS
20 JAMES MCNAMARA
21 MATTHEW MEEHAN
22 ARJUN MEHRA
23 ERIK MENDELSON
24 TOM MERCURI
25 JOSHUA MESTER

1 CJ MILLER
2 LAYLA MILLIGAN
3 RICHARD CHESTER MINOTT
4 TIMON MITRAKAS
5 CHRISTOPHER L MOBLEY
6 ERIC MOORMAN
7 MICHAEL D. MORRIS
8 MICHAEL MOWRY
9 ERIC NEMETH
10 NANCY NGUYEN
11 PAUL NIEHE
12 ANASTASIA NORTON
13 JOSHUA K. NWOSU
14 LAURIE-ANN O'CONNOR
15 PAUL O'CONNELL
16 SHANE C. OWENS
17 CHRISTOPHER PAGNANELLI
18 HSIN-CHIEH PAN
19 JORDYN PAPERNY
20 MILIN PATEL
21 SAMIR PATEL
22 ARIE PELED
23 MONICA A. PERRIGINO
24 KHAI PHAM
25 RICHARD PHILLIPS

1 BRYAN POMRANKY
2 LUKE PORCARI
3 LAWRENCE PORTER
4 DONALD POYNTER
5 RYAN PRAMER
6 LALANA PUNDISTO
7 PAUL J. PURCELL
8 TOMASZ PYTEL
9 SILVESTRE RAMOS
10 RICARDO R. RAT
11 TIMOTHY REILLY
12 SPENCER M. REITZ
13 CURTIS RESTA
14 ANUBHAV RICHARDS
15 AARON RILEY
16 CHRISTOPHER D. ROBINSON
17 RICHARD KRIS ROBISON
18 JONATHAN RODRIGUEZ
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1 ARACELI SANCHEZ
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5 ALEX SHLIVKO
6 SHAI SCHMIDT
7 DAVID SCHNEIDER
8 DESIREE SCHOEN
9 NOAH M. SCHOTTENSTEIN
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12 MARC SCHWARZ
13 DAVID SENES
14 LUPU SERBAN
15 ALI SIADATI
16 KENG HOCK SIAH
17 LUIS SILVA
18 MATTHEW W. SILVERMAN
19 ERIC SIPPER
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21 PAUL STAPLETON
22 COURTNEY STEADMAN
23 JASON STONE
24 PAUL STORVICK
25 AUSTIN STRATTON

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2 KEITH SUCKNO
3 ADAM SWINGLE
4 KEYAN TAJI
5 KAI TANG
6 MICHAEL TARSI
7 ELIZABETH THYS
8 ANHMINH TRAN
9 ELVIN TURNER
10 VICTOR UBIERNA DE LAS HERAS
11 TONY VEJSELI
12 FEMKE VESSIES
13 ERIC VOIGTSBERGER
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18 MORGAN WILLIS
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22 RICKY WOODARD
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25 MELANIE YANEZ

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2 MER FARUK YAZ
3 NATHAN YEARY
4 ANNE YEILDING
5 TAK YEUNG
6 KAILA ZAHARIS
7 JEFFREY ZATS
8 DREW ZERDECKI
9 TANZILA ZOMO

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1 P R O C E E D I N G S

2 CLERK: Starting the recording for October 7, 2022
3 at 10 a.m. Calling Celsius Network LLC, Case Number 22-
4 10964, and Ad Hoc Group of Custodial Account Holders v.
5 Celsius Network LLC, Case Number 22-1142.

6 Are the main participants from Kirkland's -- good
7 morning, Chris.

8 MR. KOENIG: Good morning. Can you hear me?

9 CLERK: Yes, I can. If you can just give your
10 appearance for the record, please.

11 MR. KOENIG: Good morning. It's Chris Koenig from
12 Kirkland & Ellis on behalf of the Debtors.

13 CLERK: Okay, and I'm admitting Ross as well.

14 MR. KOENIG: Great. Thank you. I'm trying to get
15 my video to work, to confirm that that works.

16 CLERK: Understood. Ross, if you could unmute and
17 give your appearance, please?

18 MR. KWASTENIET: Yes, good morning. It's Ross
19 Kwasteniet from Kirkland & Ellis.

20 CLERK: Thank you. All right, you could just
21 check back with me with the video, Chris.

22 MR. KOENIG: Will do. Thank you.

23 CLERK: Okay.

24 MR. KOENIG: Are you able to see me and hear me
25 okay?

1 CLERK: Yes. Now I can see both of you.

2 MR. KOENIG: Wonderful. Good morning.

3 MR. KWASTENIET: Okay, great.

4 CLERK: Good morning. Thank you.

5 MR. KOENIG: Thank you. I'm going to turn off
6 video and put myself on mute but we'll be here as needed.

7 CLERK: Okay, thanks. Sounds good.

8 MR. KOENIG: Thank you.

9 CLERK: Good morning, Mr. Hershey.

10 MR. HERSHEY: Hi. How are you?

11 CLERK: Good. Could you mute and just -- while
12 you're unmuted, could you please just give your appearance
13 for the record?

14 MR. HERSHEY: Sure. Sam Hershey from White & Case
15 on behalf of the Official Committee of Unsecured Creditors.

16 CLERK: Okay, great. And is --

17 MR. HERSHEY: Can you hear me okay?

18 CLERK: I can hear you. I can't see your video
19 but I can hear you.

20 MR. HERSHEY: Great. Thank you.

21 CLERK: Is Gregory Pesce or David Turetsky -- are
22 either of them going to be joining as well?

23 MR. HERSHEY: Yes, they both will be joining. I
24 think they were in the waiting room. So, I don't know if
25 they're still there but I can ping them. They will be

1 joining.

2 CLERK: Okay, I don't see either of them in there
3 unless someone else --

4 MR. HERSHEY: I'll email them.

5 CLERK: Okay. All right, thank you. Deborah, are
6 you going to be speaking this morning?

7 MS. FRANKEL: Deborah Frankel.

8 CLERK: Back to you... Good morning. Could the
9 parties that have joined, if you're speaking on the record
10 and have not given your appearance yet, please do so.
11 Again, for the participants that have joined, if you are
12 speaking on the record this morning and have not given your
13 appearance, please do so.

14 MS. BARSTOW: Hi, I'm Nicole Barstow.

15 CLERK: Okay, Nicole. And if you could specify
16 how you're -- if you're a creditor, or if you're with a
17 firm, if you're pro se -- could you just specify that,
18 please?

19 MS. BARSTOW: Yes, pro se creditor with an earn
20 account until (indiscernible).

21 CLERK: Thank you. And you're speaking this
22 morning?

23 MS. BARSTOW: Yes, I'd like to speak. I have a
24 motion in in regards to requesting for USDC -- the USD coins
25 to be considered secured creditors instead of unsecured

1 creditors due to the fact that it's backed by collateral.

2 CLERK: You don't have to go into a big
3 explanation. That's fine. So, the judge will give
4 participants -- ask participants in turn if anyone wants to
5 speak on the record. So, you can just listen for that cue.

6 MS. BARSTOW: Okay. Thank you.

7 CLERK: You're welcome. All right, please pause
8 recording.

9 Good morning, Deborah Kovsky. Are you going to be
10 speaking this morning on the record from Troutman?

11 MS. KOVSKY-APAP: Yes, I expect so.

12 CLERK: All right. If you could just give your
13 appearance, please.

14 MS. KOVSKY-APAP: Sure. Deborah Kovsky-Apap from
15 Troutman Pepper on behalf of the Ad Hoc Group of Withhold
16 Account Holders.

17 CLERK: Thank you. Is there anyone else that has
18 been admitted this morning that will be speaking on the
19 record and has not given their appearance? Thank you.

20 Again, for those that have joined, is there anyone
21 that has not given their appearance that will be speaking on
22 the record? All right, Kevin, you can pause the recording.

23 Yes, Cam Crews?

24 MR. CREWS: Yes. I'm a pro se creditor and plan
25 to speak on Objection Filing 914 if on topic for today.

1 CLERK: Okay, thank you for noting your
2 appearance. Anyone else that's going to be speaking on the
3 record this morning that has not given an appearance yet?
4 All right, you can pause the recording again.

5 Hi, Gregory Pesce, if you could unmute and give
6 your appearance, please.

7 MR. PESCE: Yes. Hi. Gregory Pesce, White &
8 Case, on behalf of the Creditors Committee. My colleague,
9 Mr. Hershey, who I believe is on already, will be taking the
10 lead for the Committee today. Thank you.

11 CLERK: Thank you. And we're still waiting for
12 David Turetsky, correct?

13 MR. PESCE: I think that's correct.

14 CLERK: I don't see him in the waiting room yet.
15 Okay, so we'll look out for him. All right, are there any
16 participants that are speaking on the record that have not
17 given your appearance yet? All right, I'm admitting Mr.
18 Turetsky. Good morning, David Turetsky. If you could
19 unmute your line? There we go. Hi, good morning, David, if
20 you could unmute and give your appearance for the record?

21 MR. TURETSKY: Good morning. It's David Turetsky
22 of White & Case on behalf of the Creditors Committee.

23 CLERK: Thank you.

24 MR. TURETSKY: Thank you.

25 CLERK: All right, please pause the recording.

1 Good morning, Shara. If you could unmute and give your
2 appearance for the record, please.

3 MS. CORNELL: Good morning. Shara Cornell from
4 the Office of the United States Trustee.

5 CLERK: All right, thank you. Are Mark Bruh or
6 Brian Masumoto going to be joining as well?

7 MS. CORNELL: You know what? I think so.

8 CLERK: Okay, all right, thank you.

9 MS. CORNELL: Thank you.

10 CLERK: Again, for any participants that have
11 joined who have not given their appearance yet and they're
12 speaking, please give your appearance. Good morning,
13 Vincent, if you can unmute and give your appearance, please.

14 MR. LAZAR: Good morning. Vincent Lazar on behalf
15 of the Trustee -- or excuse me, Examiner, not Trustee.

16 CLERK: Good morning, Vincent. Is Shoba also -- I
17 think she joined as well. Is she -- Shoba, are you speaking
18 this morning? I don't know if she can hear me. Vincent, is
19 Shoba speaking this morning?

20 MR. LAZAR: She will be on speaking mode if the
21 judge wants to hear from her.

22 CLERK: Okay. Her appearance is noted. All
23 right, please pause the recording.

24 For the participants who have joined, if anyone is
25 speaking on the record and has not given their appearance

1 yet, please -- please unmute and give your appearance.

2 MR. HERMAN: Emanuel Herman, pro se Celsius
3 creditor.

4 CLERK: Thank you. Nelly Almeida, are you going
5 to be speaking this morning? All right, again, for any
6 participants that have joined, if you're speaking this
7 morning and have not given your appearance, please unmute
8 one at a time and give your appearance for the record.

9 WOMAN 1: (indiscernible) LLP on behalf of several
10 holders of the Series D Preferred shareholders.

11 CLERK: Okay, thank you. And are you going to be
12 the only party that's speaking from your firm?

13 WOMAN 1: If we do speak, yes, Your Honor.

14 CLERK: Okay, thank you for your appearance. All
15 right, is there anyone else that has joined that has not
16 given their appearance yet and will be speaking on the
17 record this morning? Good morning, Brian. Can you hear me?

18 MR. MASUMOTO: Yes, Brian Masumoto from the Office
19 of the United States Trustee.

20 CLERK: All right, thank you. All right, Mark
21 Bruh, if you could unmute and give your appearance, please.

22 MR. BRUH: Yes. Mark Bruh for the United States
23 Trustee. I know Ms. Cornell is going to be at this hearing
24 so I don't know if I'll be speaking at all.

25 CLERK: Okay, thank you. Ms. Cornell and Mr.

1 Masumoto both gave their appearance. All right, David
2 Adler, are you going to be speaking this morning?

3 MR. ADLER: Good morning. I am not. I do not
4 intend to be speaking.

5 CLERK: Okay, thank you. Kyle Ortiz, are you
6 going to be speaking this morning?

7 MR. ORTIZ: Good morning. Yes, I will, on behalf
8 of the Ad Hoc Group of Custodial Account Holders.

9 CLERK: Okay. Are the other two parties, Jared
10 and Brian, are they speaking as well?

11 MR. ORTIZ: They most likely won't but they are --
12 I do see at least Jared on. It's kind of hard to find
13 everybody in this...

14 CLERK: I understand. Yeah, Jared has joined.

15 MR. ORTIZ: Yeah, and Brian should be joining
16 shortly, but I don't -- most likely it'll just be me unless
17 something goes sideways.

18 CLERK: Okay. Thank you, Kyle.

19 MR. ORTIZ: Thanks.

20 CLERK: All right, counsel for the Texas State
21 Securities Board, are you going to be speaking this morning?

22 MS. DESAI: No, I will not. I'm just monitoring.

23 CLERK: Okay, thank you. Okay, I'm going to go
24 through a list of different participants that have not
25 joined to see if parties have given their appearances. Is

1 there anyone from Sullivan Cromwell on the phone that will
2 be speaking this morning? Okay. Anyone from DLA Piper?
3 Okay. Anyone from the Federal Trade Commission?

4 MS. JOHNSON: Yes, good morning. Katherine
5 Johnson is here. We're not going to be making an
6 appearance; we're just monitoring.

7 CLERK: Okay. All right, thank you. All right,
8 anyone from FisherBroyles on the phone or joining by video?
9 All right, participants that have joined, if anyone has not
10 given their appearance and plans to speak on the record,
11 please unmute your line and give your appearance at this
12 time.

13 MR. KOTLIAR: Good morning, Deana, this is Bryan
14 Kotliar of Togut, Segal & Segal, on behalf of the Ad Hoc
15 Group of Custodial Account Holders.

16 CLERK: Okay, thank you, Brian. All right, is
17 there anyone from Akin Gump this morning that will be
18 speaking on the record? That is a no. All right, for the
19 participants that have joined and have not given their
20 appearance and are speaking on the record, please unmute
21 your line one at a time and give your appearance, please.
22 All right, Kevin, please pause the recording.

23 Anyone that has not given their appearance and is
24 speaking on the record, please unmute your line and give
25 your appearance, please.

1 MS. COHEN: If I may speak -- my name is Hollace
2 Cohen. I'm with FisherBroyles. My client is Vincent
3 Goetten.

4 CLERK: Okay, thank you very much.

5 MS. COHEN: Thank you. All right, Dan Kaplan, are
6 you speaking this morning? All right, again, Dan Kaplan,
7 are you speaking on the record this morning? I'll take that
8 as a no. All right, anyone else that has joined that has
9 not given their appearance and will be speaking on the
10 record this morning?

11 All right, are we waiting on anyone, to anyone's
12 knowledge?

13 MR. KOENIG: Deana, not from the Debtors. I
14 believe all the parties for the scheduling conference here
15 this morning are -- are on the line.

16 CLERK: Okay, thank you. All right, Judge, would
17 you like me to proceed with the announcements and -- to
18 start the hearing?

19 THE COURT: Yes, please go ahead, Deana. Thank
20 you.

21 CLERK: All right. If everyone could please take
22 -- pay attention to the following announcements: All
23 persons are strictly prohibited from making any recording or
24 reproduction of court proceedings, whether by video, audio,
25 screenshots or otherwise. Violation of this may result in

1 sanctions. Also, if everyone could please -- each time they
2 speak, please identify yourself for the court record.
3 Judge, would you like to begin?

4 THE COURT: Yes, I would. Thank you. Good
5 morning, everybody. This is Judge Glenn. We're on the
6 record in Celsius in the main case, 22-10964 and the
7 adversary proceeding, Ad Hoc Group of Custodial Account
8 Holders v. Celsius Network LLC et al., 22-01142. An agenda
9 has been filed in both the main case and in the adversary
10 proceeding. The Court received and viewed the letter dated
11 October 6th regarding the proposed -- the Debtor, the
12 Committee and the Ad Hoc Groups with the proposed joint
13 stipulation. So, I have those in front of me. Who's going
14 to begin for the Debtor?

15 MR. KOENIG: Good morning, Your Honor. It's Chris
16 Koenig from Kirkland & Ellis that's counsel to the Debtors.
17 Can you hear me okay?

18 THE COURT: Yes, I can.

19 MR. KOENIG: Wonderful. Your Honor, as you
20 mentioned, we're here this morning on just one matter, the
21 status conference related to certain custody and withhold
22 issues. I'll get to those in a moment. Our next omnibus
23 hearing is on October 20th. The Debtors will provide Your
24 Honor and the other parties with a more robust status update
25 at that point, but we just wanted to provide one quick

1 update for the Court.

2 Your Honor, as you probably saw in the press,
3 we've had a change at the top of our management team. Alex
4 Mashinsky, Celsius' former CEO, has voluntarily stepped
5 aside and the Special Committee of Celsius' board of
6 directors has appointed Mr. Chris Ferraro, who is the
7 company's chief financial officer, to also serve as Celsius'
8 interim chief executive officer and chief restructuring
9 officer.

10 Mr. Ferraro is likely listening to the proceedings
11 this morning. I expect that you will be a participant at
12 future evidentiary hearings in court in the future. We just
13 wanted to confirm for the Court and the other parties in
14 interest, the Debtors have had a very smooth transition to
15 operate under Mr. Ferraro's leadership. The employees and
16 the company's management are engaged with and reporting to
17 him, the business is operating as usual, given the
18 restrictions that are in place as a result of these Chapter
19 11 cases.

20 Mr. Ferraro is also the signatory on the Debtor's
21 schedules of assets and liabilities and statements of
22 financial affairs, which were filed late in the evening on
23 Wednesday, October 5th. That's just one --

24 THE COURT: I've only had the briefest opportunity
25 to begin to look at the schedules. I noted that they were

1 filed. I do plan to spend more time reviewing them but I
2 still -- for now, let me just say I noted that they were
3 filed.

4 MR. KOENIG: Thank you, Your Honor. With that
5 brief update out of the way, I'd propose to turn to the
6 scheduling order that was proposed for these matters.

7 THE COURT: Let me ask a very pointed question and
8 I'm sure it's something that the examiner -- the Committee,
9 the ad hoc committees and perhaps others are interested in -
10 - and I've certainly read but don't fully understand
11 everything about withdrawals of assets by insiders of the
12 company. Let me just describe it that way. Did Mr. Ferraro
13 -- is it miss or missus?

14 MR. KOENIG: It's Mr. Ferraro, Your Honor. Yes,
15 Mr. Chris Ferraro.

16 THE COURT: Okay. Did he withdraw assets from the
17 Debtor for insiders -- in accounts more than 90 days -- let
18 me just right now ask the question with respect to the 90
19 days before the filing of the bankruptcy proceeding.

20 MR. KOENIG: With respect to Mr. Ferraro, Your
21 Honor?

22 THE COURT: With respect to him.

23 MR. KOENIG: No, Your Honor, I don't believe so.
24 I mean, he, of course, drew a salary in his role as chief
25 financial officer, but as far as withdrawing assets from the

1 platform, I don't believe so.

2 THE COURT: Okay. Others may look longer than
3 that 90-day period but that's my question for now.

4 MR. KOENIG: Understood.

5 THE COURT: All right, let's proceed with the --
6 you know, the path forward. Let me describe it that way.
7 And, as I say, I've read the letter and I've read the
8 proposed stipulation. I understand that there is one issue
9 as to which of the parties could not agree whether, you
10 know, they should be included in the briefing and whatever
11 discovery is done. And so I do want to hear specifically
12 about that issue.

13 MR. KOENIG: Very good, Your Honor. I'll keep my
14 overview remarks brief and then I'll get right into the
15 issue. But just to provide an update -- following the last
16 hearing, the parties met and conferred regarding a schedule.
17 I'm pleased to report that, of course, we -- we filed what
18 we filed last night. That includes an agreement on
19 everything except for this one issue about the ordinary
20 course of business defense.

21 The purpose of the schedule is to streamline these
22 issues to provide information to the Debtors and other
23 parties in interest about these potential preference claims
24 that the Debtor's estates hold. We have agreed -- in Phase
25 II, the parties have agreed to brief the ordinary business

1 terms defense and the defense under Section 546(e) of the
2 Bankruptcy Code. We have not agreed, as Your Honor
3 mentioned, about the ordinary course of business defense.

4 From the Debtor's perspective, it is perfectly
5 reasonable and appropriate to include that defense as well.
6 The entire purpose of this streamlined briefing schedule is
7 to make sure that the Debtors and the other parties in
8 interest have the benefit of some bellwether rulings from
9 the Court with respect to certain would-be defendants of
10 preference claims. The purpose of that is to make sure that
11 all parties have the benefit of understanding, you know,
12 which way the wind is likely to blow with respect to certain
13 transfers.

14 Of course, all rights are reserved as to any
15 particular preference claim but we're doing this briefing
16 schedule in order to avoid the Debtors from having to bring
17 formal preference claims and bog down the process. We're
18 trying to do this on an expedited basis, given the
19 exigencies of these cases.

20 So, from the Debtor's perspective, the ordinary
21 course of business defense is similar to 546(e) and the
22 ordinary business terms defense in that it cuts across
23 Defendants. And it'd be very helpful to the Debtors, Your
24 Honor, to have the benefit of some bellwether rulings from
25 Your Honor as part of these proceedings.

1 THE COURT: One question I had is does that issue
2 need to be resolved today or can it await the Phase I
3 rulings?

4 MR. KOENIG: Your Honor, I mean, we would prefer
5 for it to be resolved today, but if it were to be resolved
6 in connection with the Phase I rulings and before Phase II
7 kicked off, you know, there would be no objection from the
8 Debtors.

9 THE COURT: Let me ask another question. For
10 purposes of Phase I, will the presumption of the Debtor's
11 insolvency in the 90 days before the filing -- will not be
12 challenged? In other words, no evidence will be offered and
13 the Court will not be asked to -- asked to decide whether
14 the Debtor was insolvent? As I understand it, the bulk of
15 the transfers into custody accounts happened 89 days or so
16 before the bankruptcy filing. And, of course, there's a
17 presumption under the statute of insolvency, but that
18 presumption can be overcome. And have the parties discussed
19 that issue? And, if concluded, I know that in Paragraph 9
20 of the stipulation, it says that during Phase 1, the parties
21 agree that all inferences regarding the existence, validity
22 and merit of preference and other claims against the custody
23 and withholding claimants will be drawn in favor of the
24 Debtor's estates.

25 And I took that to mean that in Phase I there will

1 be no challenge as to whether or not the Debtor was
2 insolvent at the time of the transfers.

3 MR. KOENIG: Your Honor, again, Chris Koenig. We
4 -- from the Debtor's perspective that's certainly correct.
5 We don't anticipate there to be any evidence or for anybody
6 to be challenging that issue. Specifically during Phase I,
7 I think the parties are agreed that the Debtor's estates are
8 presumed to have prima facie preference claims. Of course,
9 all rights being reserved with respect to any individual
10 preference claim. That's just for purpose of the briefing
11 of the issues in Phase I, but I'll let the other parties
12 speak for themselves.

13 THE COURT: Sure. Let me raise one other issue
14 before I hear from the other parties. Paragraph 15 of the
15 stipulation provides, in part, 15(c), any ruling in
16 connection with a Phase I issue, including in connection
17 with the Debtor's custody and withhold motion or the
18 preference defense motion, shall be immediately appealable
19 and the parties waive any objection to such appeal being
20 taken immediately.

21 The problem with that is that's not my issue.
22 Under 28 USC 158(a)(3), it provides that for interlocutory
23 orders an appeal (indiscernible) with leave of court from
24 the -- from other interlocutory orders. And -- but it's the
25 District Court that has to grant leave, not this court. I

1 can't -- so, I can't approve a stipulation that says it's
2 immediately appealable.

3 MR. KOENIG: Understood, Your Honor. And the
4 intent of the language -- the parties agreed not to oppose
5 any such relief. Of course, the decision rests with the
6 District Court. We're happy to adjust the language in 15(c)
7 to make that more clear that it's really an agreement
8 between the parties that -- if a party, you know, sought an
9 interlocutory appeal, the other parties wouldn't oppose it.
10 But, of course, it's within the District Court's discretion
11 on that issue.

12 THE COURT: I think you need to modify that
13 language. I mean, I can't approve a stipulation that says
14 something's immediately appealable when it's not my call.

15 MR. KOENIG: Understood, Your Honor. We're happy
16 to do so.

17 THE COURT: All right. Let me hear -- let me hear
18 from Mr. Ortiz first, and then I'll hear from Ms. Kovsky and
19 I'll let anybody else who wants to be heard speak as well.

20 MR. ORTIZ: Good morning, Your Honor. Kyle Ortiz
21 of Togut Segal & Segal on behalf of the Ad Hoc Group of
22 Custodial Account Holders. Thank you for your time this
23 morning, Your Honor. I think apologies on behalf of all the
24 parties for, you know, getting you something last night for
25 a hearing this morning. But there was a fair amount of work

1 to get here. I won't pretend like we love this schedule.
2 Of course, as you, I'm sure, are fully aware, we'd like to -
3 -

4 THE COURT: I commend you in that but that's, you
5 know -- it's important that we move this forward.

6 MR. ORTIZ: Right. And that was ultimately what
7 got us there was -- you know, at some point we just need to
8 be moving things forward. You know, we've had papers
9 drafted for some time and we're looking forward to the
10 opportunity to put them in front of your court and hopefully
11 resolve things in Phase I. But the question is if we don't
12 resolve things in Phase I and we get to Phase II, and we
13 want to talk about the preference defenses, does ordinary
14 course of business need to be there?

15 And, in our view, it's not -- the reason that we
16 don't think it's useful is because it doesn't really, in our
17 view, tell Your Honor anything. I think we're ultimately
18 trying to answer two questions through this whole process:
19 One, whether or not it's property of the estate. And if
20 it's not property of the estate, what does that mean? And
21 if there are defenses to preferences, if preferences apply,
22 we need ones that are actually applicable to everybody. And
23 the safe harbor and ordinary business terms, in our view,
24 does apply to absolutely everybody who's equally situated.

25 Ordinary course of business is very fact-specific,

1 and it's going to be not something that you can take even
2 from a sampling that the parties have talked about and
3 ultimately say, okay, this applies to 58,000 people. And
4 it's kind of an expensive exercise and, you know, there
5 seems to be a desire for a fair amount of discovery into
6 these bellwether plaintiffs -- sorry, Defendants -- and it
7 doesn't seem like it's really progressing anything in the
8 case. Whereas if we ultimately prevail on business terms of
9 safe harbor, that -- it should apply to all 58,000 potential
10 preference Defendants.

11 Whereas ordinary course of business, you could
12 have someone who every Monday for years and years, you know,
13 took out the exact same amount from earn, and you have
14 everybody else who, on a given day, decided to withdraw
15 everything they had in earn. And they're just -- you're not
16 going to be able, I don't think, to really learn anything
17 about what should we do with this entire pot of money by
18 going down that kind of expensive and time-consuming rabbit
19 hole, Your Honor?

20 THE COURT: My concern, Mr. Ortiz, is if that
21 issue is not resolved, at least as to bellwether
22 accountholders, where does that leave your clients if the
23 Debtor continues to insist that it's not -- the ordinary
24 course defense doesn't apply?

25 MR. ORTIZ: That's a great question, Your Honor.

1 So, really, to be honest, the way we look at this is, you
2 know, if we prevail in Phase I, that's easy. If we get to
3 Phase II and these broad defenses that apply to everybody
4 don't get us there and there isn't -- and Your Honor decides
5 that, you know, you don't think that those defenses apply,
6 we're probably in a spot where we need to wait. We need to
7 see where this case is going.

8 Because you can't -- and if you've determined, in
9 Phase I, that they -- notwithstanding that you've determined
10 that it is not property of the estate but because of these
11 they can hold onto it, and we don't prevail on these
12 particular defenses, I don't really think it tells us much
13 to go down the ordinary course of business. Because I think
14 we just, quite frankly, have to wait because there's the
15 question of will the Debtors ever really want to bring
16 preference actions? And I think we're at a stage in the
17 case where we have no idea.

18 So, again, it doesn't really tell us a lot. And I
19 think we would have to say, you know, we're really happy
20 that we have a ruling that it's not property of the estate
21 and we're going to have to wait if Your Honor is determined
22 that that's -- you know, the next step isn't that it's
23 released at that point and see where the case goes. So,
24 that's another reason I don't think it's terribly helpful to
25 take the time and energy and pick a couple bellwethers and

1 bother those people with discovery -- to go down that path.

2 THE COURT: Ms. Kovsky?

3 MS. KOVSKY-APAP: Good morning, Your Honor. Deb
4 Kovsky, Troutman Pepper, for the Ad Hoc Group of Withhold
5 Account Holders. I agree with and echo everything that Mr.
6 Ortiz just said. I represent a group of 11 withhold account
7 holders. We could choose bellwethers whose fact patterns
8 don't fit any of them, don't fit some of them. And so we
9 could go through this entire exercise and at the end of the
10 day, my clients are still left in a position where well, we
11 just don't know.

12 To us, it makes the most sense to look at defenses
13 that are broadly applicable, that are going to apply to
14 every member of our group and perhaps to every member of the
15 withhold -- you know, every withhold account holder across
16 the board. Otherwise there's just -- there's not a lot of
17 value. I understand the Debtor wants guidance and wants
18 some bellwethers and have some idea as to what preference
19 claims might be viable, but there's just -- there's too many
20 potential fact patterns to make this a worthwhile exercise.

21 If Your Honor saw the SOFAs that were just filed,
22 over 14,000 pages of transactions. How we're going to --

23 THE COURT: Yeah, I didn't read 15,000 pages,
24 okay?

25 MS. KOVSKY-APAP: But -- I did not either. I did

1 look at the page count and realized that there are just far
2 too many potential fact patterns here to make a fact-
3 specific defendant-specific defense a viable exercise.

4 THE COURT: Okay, who else wants to be heard on
5 this issue of what should be included in Phase II?

6 CLERK: Judge, Mr. Hershey has his hand up.

7 THE COURT: Oh, okay. Well, go ahead, Mr.
8 Hershey. Yeah, there you are. Okay.

9 MR. HERSHEY: Thank you, Your Honor. Your Honor,
10 I have some broader comments on the schedule that, if Your
11 Honor prefers, I'll wait to give until we resolve this issue
12 on the ordinary course defense. It's up to you.

13 THE COURT: No -- go ahead.

14 MR. HERSHEY: Okay, thank you, Your Honor.

15 THE COURT: I kind of have the feeling that you've
16 all sent yourselves and me on a death march here, but go
17 ahead, Mr. Hershey.

18 MR. HERSHEY: Certainly not my intention, Your
19 Honor. Just for the record, Sam Hershey from White & Case,
20 on behalf of the Official Committee of Unsecured Creditors.
21 Your Honor, in negotiating the schedule for the custody and
22 withhold disputes, the Committee had four goals in mind:
23 First, the Committee wanted to find a way to tee these
24 issues up as quickly as we responsibly could so that, to the
25 extent the Court determines that the custody and withhold

1 coins are not estate property and there is no other basis
2 for the estate to retain them or postpone distributions,
3 those coins can be returned to the accountholder with all
4 deliberate speed.

5 Second, the Committee wanted to ensure that this
6 process, which aims to determine the rights of custody and
7 withhold accountholders does not in any way prejudice the
8 rights of any other types of accountholders or the Debtor's
9 estates.

10 Third, the Committee sought to include a mechanism
11 resolving key issues relevant to potential preference claims
12 against custody and withhold accounts. And I'll return to
13 this when I discuss the ordinary course of business defense
14 that is under discussion.

15 And four, the Committee wanted to ensure that it
16 would receive all discovery necessary for it to form a
17 position on these issues before it was asked to litigate
18 them.

19 The Committee is pleased to report that each of
20 these goals has been met. The schedule that the parties
21 have negotiated moves quickly resulting in a hearing on the
22 Debtor's motion and certain threshold legal issues regarding
23 ownership as early as next month. The schedule also
24 reflects the robust reservation of rights for all parties
25 and for the estates. It makes clear that no other

1 acountholder's rights, including the rights of earn and
2 borrow acountholders, are being adjudicated or prejudiced
3 in any way by this proceeding.

4 The schedule includes a potential second phase
5 that will allow the parties to litigate the key issues
6 relevant to preference claims against the custody and
7 withhold accounts, including any defenses the acountholders
8 may have under Section 546(e) and 547. And the schedule
9 provides for discovery regarding all material issues
10 relevant to this dispute, including the history of the
11 custody and withhold accounts, the mechanics of those
12 accounts and the nature of the current assets held in those
13 accounts. Importantly, this information will be contained
14 in a sworn declaration to be filed on the docket in this
15 case where all acountholders will be able to read it.

16 Now, briefly, Your Honor, on the ordinary course
17 of business defense I think that there are two issues. The
18 first is the bellwethers themselves. We should, in the
19 interest of efficiency, fully and finally adjudicate all
20 relevant defenses as to those individuals. Mr. Ortiz says
21 we shouldn't bother those people with discovery. They
22 sought relief. They chose to file an adversary proceeding
23 and a motion. There is no basis for requiring debtors and
24 the estates to litigate this in phases rather than getting
25 it done all at once because those individuals have sought to

1 have this resolved.

2 The second issue, Your Honor -- and I agree with
3 Mr. Koenig -- the Committee's view is that the whole point
4 of litigating bellwether cases is to identify likely common
5 facts and defenses that'll enable the parties and the Court
6 to gain a better understanding of the broader conference
7 litigations that will potentially follow. Mr. Ortiz seeks
8 to make the perfect the enemy of the good by arguing that
9 ordinary course defenses are fact-specific. That may be
10 true but there will almost certainly be overwhelming factual
11 overlap between the bellwethers and many other customers and
12 we should therefore hear these issues while we can to allow
13 us to chart a path forward.

14 For these reasons, Your Honor, the Committee
15 supports the schedule that the parties have negotiated and
16 asks the Court to enter an order adopting it and include in
17 that order a requirement that the bellwethers litigate the
18 ordinary course defense. Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Hershey. Anyone else
20 want to be heard right now. Go ahead, Ms. Cornell.

21 MS. CORNELL: Thank you, Your Honor. Shara
22 Cornell on behalf of the United States Trustee. I also had
23 some general remarks if Your Honor --

24 THE COURT: Yeah, go ahead.

25 MS. CORNELL: (indiscernible) -- at this point.

1 Thank you very much. I'd like to note that the stipulation
2 was filed late last night, and we certainly didn't have time
3 to respond. And we were not even aware that such a
4 stipulation was forthcoming -- even though we did file a
5 limited objection at Docket Number 933 on the basis that we
6 have a court-appointed examiner with a court-mandated scope,
7 a scope which was consented to by both the Committee and the
8 Debtors. The stipulation raises some concerns about a
9 potential duplication over what is to be investigated by the
10 examiner.

11 It's interesting that the Committee counsel just
12 used the term overwhelming factual overlap because I think
13 that is the case also with the examiner in this case. We
14 don't want to duplicate resources. We appointed an examiner
15 and we want the examiner to do the investigation --

16 THE COURT: I wish that process -- I wish you had
17 selected sooner, but --

18 MS. CORNELL: I think that --

19 THE COURT: I kept checking the docket every day
20 looking, has the U.S. Trustee selected an examiner yet?

21 MS. CORNELL: And I apologize for that, Your
22 Honor. We had -- as we previously reported, there was an
23 overwhelming response to the examiner role. But we did
24 appoint an examiner, and it seems like a duplication of
25 efforts to have estate fiduciaries performing similar

1 functions.

2 And, as noted by the examiner motion and the
3 examiner order, both the Debtors and the committees, they
4 have a stake in identifying what the return is here; not
5 whether it's the correct thing to do. The examiner is a
6 neutral third party who's best-suited to examine a debtor's
7 assets, and particularly the extent of and potential impact
8 of the debtor's management and comingling of its assets.

9 Additionally, there are some concerns about the --

10 THE COURT: Let me stop you for a second. The
11 Committee -- certainly it's an issue for the Committee
12 whether assets should be returned to custody and withhold
13 accountholders. I think I made this point at a prior
14 hearing. Every dollar that gets paid back -- every dollar -
15 - whatever the asset is that gets transferred back to
16 custody and withhold accountholders is that much less
17 available for pro rata distributions to creditors.

18 MS. CORNELL: Mm hmm.

19 THE COURT: With all due respect, I don't believe
20 -- this is an issue where the Committee's interest is direct
21 and their faith -- what the examiner does is important, and
22 I do want that input, but this is an issue -- while I hope
23 to have all the parties in interest avoid duplication of
24 effort, the Committee's investigation, the examiner's
25 investigation -- but this is an issue that directly impacts

1 unsecured creditors. And so I don't think that the
2 Committee -- you know, they shouldn't have to defer to what
3 the examiner concludes. I hope they'll coordinate what's
4 done but on this issue, I hope that the examiner does a very
5 robust, thorough, prompt investigation, but on an issue that
6 directly impacts the potential recovery to unsecured
7 creditors, I don't think the Committee is just beholden to
8 have to wait to see what the examiner does. So, on that --
9 to that extent -- I interrupted you because on that I don't
10 agree with you.

11 MS. CORNELL: Understandably, Your Honor. Thank
12 you. You know what? I think that's a good segue. You
13 know, I'd like to note that the examiner is present and this
14 is her first opportunity to address the Court. And if the
15 Court deems it appropriate, I would appreciate it if the
16 Court were to give her a few minutes to introduce herself.
17 And if she has any views or opinions, it might be
18 appropriate, given that the filing took place last night and
19 may have an impact on her investigation.

20 THE COURT: That's fine. And I also note that Mr.
21 Lazar has made an appearance. I assume he's counsel to the
22 examiner. But I would like to hear from the examiner.

23 MS. PILLAY: Thank you, Your Honor. Shoba Pillay,
24 the examiner, with counsel Vincent Lazar from Jenner Block
25 is also present, as you note. I appreciate the opportunity

1 to address the Court today. I appreciate the opportunity to
2 engage in this investigation. I do have concerns in light
3 of a lot of what Ms. Cornell has identified as the
4 duplication of the investigation. We are working closely
5 with the Debtor committee and ad hoc committees, and anyone
6 else who is interested in talking to us -- we've taken the
7 opportunity to speak to already in the last week.

8 The concern I have is, I think -- I understand the
9 Court's goal in moving forward on these open issues, and I
10 understand the Committee does have a critical interest in
11 identifying which asset should stay with the estate and may
12 not be appropriate for the estate. However, it is directly
13 coextensive with the examiner's mandate. So, the question
14 that I have is in light of the stipulated order, if Your
15 Honor does deem it appropriate to move forward with it, if
16 it would be appropriate for a date certain within that
17 timeframe, within Phase I, for the examiner to issue an
18 interim report based on whatever investigation we're able to
19 complete to that date in order to be able to provide some
20 insight from the independent perspective.

21 In other words, we are working closely with all
22 the parties in order to get the materials but I think
23 because the purpose of the examiner in this matter is to
24 identify and, to some level, look under the hood, if you
25 will, in light of some of the transparency concerns

1 articulated by the Trustee -- in my mind, it would be useful
2 for the Court and the parties to have perspective as the
3 examiner's position before --

4 THE COURT: I agree. But the question is one of
5 timing.

6 MS. PILLAY: Certainly, Your Honor. I think based
7 upon --

8 THE COURT: (indiscernible) I'm not faulting you
9 in the least. You were recently appointed. The issue of
10 whether property in the custody accounts or the withheld
11 property is property of the estate was identified as an
12 issue, you know, pretty much right at the outset of the
13 case. And to the extent that the property doesn't belong to
14 the Debtor, it's not an estate asset, the property of
15 accountholders is being held up.

16 There is this problem identified early also that
17 transfers -- the bulk of the transfers were within 90 days
18 of bankruptcy, raising the preference issue, which is a
19 giant complication. But do you -- I want this all to move
20 forward. I think that I would very much value your
21 independent assessment of this issue. The question is one
22 of time. I think clearly you have to prioritize the issues
23 you're going to deal with.

24 I do come back to the point that the Committee --
25 this is a value issue for the Committee. Every -- whether

1 it's cryptocurrency or dollars, I'll talk about dollars --
2 every dollar out is a dollar less that's available for
3 distribution to the general bulk of unsecured creditors.
4 And so it has to happen quickly. Do you have an estimate of
5 how much time you want to be able to investigate this set of
6 issues?

7 MS. PILLAY: Your Honor, we are still assessing
8 the collection of materials but I think in light of the
9 stipulated order, to the extent Your Honor enters that, we
10 would suggest at least for an interim report on this issue,
11 to file something about 14 days after the first Phase I
12 briefing. So, that would be, I guess, 28 days from if the
13 order is entered today based on the current stipulated
14 order. In order to give -- so, it would be sort of inside
15 or interim to the briefing schedule proposed by the parties.

16 THE COURT: Let me ask, did you or Mr. Lazar speak
17 with the other counsel involved in this to see whether --
18 what their view is about fitting your interim report on the
19 schedule you proposed into this overall schedule?

20 MS. PILLAY: We did not, Your Honor, in part
21 because I think this was filed last night and we were making
22 an assessment of how to best address it in a --

23 THE COURT: I don't fault you at all for that. I
24 mean...

25 MS. PILLAY: And, Your Honor, the idea here is not

1 to be obstructive to the process. I take your point. It's
2 to provide the parties with as much perspective as possible.

3 THE COURT: I'll tell you; I want your interim
4 report on this issue because you don't represent any
5 particular stakeholder in this. The Committee does. The
6 Debtor, I'm not quite sure where they -- where to align them
7 on this issue. I absolutely want your interim report. So,
8 just repeat for me -- I know you said interim report 14 days
9 after the Phase I briefing. When would that be? Because I
10 know what's going to happen. You're going to file an
11 interim report and other parties are going to want to start
12 taking potshots at you one way or the other. So, what --
13 just --

14 MS. PILLAY: The original declarations are, I
15 think, due to be filed 14 days from the entry of this order.
16 And the parties are to file their opening briefs ten
17 calendar days after that. So, it would be 14 days after the
18 opening briefs, I think would be the appropriate timeline.

19 THE COURT: I guess I should ask this -- the
20 Debtor Committee and the Ad Hoc Committees whether they
21 expected to take depositions of the declarants and when that
22 would take place.

23 MR. KOENIG: Your Honor, in the -- again, Chris
24 Koenig for the Debtors. The stipulation provides that there
25 won't be depositions of the declarant in Phase I. So,

1 that's a non -- a nonissue for purposes of Phase I.

2 THE COURT: Well, what do I do, Mr. Koenig, when
3 you've all agreed there won't be any depositions and, you
4 know, there's a violent reaction by the other parties about
5 well, that's not true. I guess we'll have an eventual
6 hearing but -- so, everyone's agreed that declarations will
7 be filed and you'll do it the old-fashioned way, cross-
8 examination at a hearing to the extent anybody disputes the
9 facts. That's what everybody's agreed --

10 MR. KOENIG: That's the agreement by the parties,
11 Your Honor. And, also, all parties are reserving rights
12 that other facts are relevant to Phase I issues. So, if at
13 the Phase I hearing the examiner has identified additional
14 facts or the other parties believe that there are additional
15 facts outside the scope of the declarations that are
16 relevant to Phase I issues, which, to be clear, the Debtor's
17 position is that it's purely legal -- those matters can be
18 determined on a legal basis only. That there's an
19 unambiguous agreement between the parties. So, parole
20 evidence isn't relevant as a matter of law. But to the
21 extent parties believe that there are additional facts, they
22 can argue that at the Phase I hearing and, you know, Your
23 Honor would make a ruling at that time.

24 What we were trying to do is to streamline Phase I
25 so that we could get in front of Your Honor on these issues

1 and try to argue, you know, the legal issues first. And to
2 the extent other facts become relevant and Your Honor
3 believes the facts are relevant, perhaps -- you know,
4 because Your Honor finds that the language is not -- or that
5 the language is ambiguous, then we will have to -- we will
6 have to deal with that at the appropriate time.

7 THE COURT: Do you -- I know we're doing this all
8 on the fly. So, you've heard from Ms. Pillay about her
9 suggestion that she does an interim report 14 days after the
10 Phase I briefing. What's your position on that?

11 MR. KOENIG: Oh, look, I'd like to -- Your Honor,
12 I'd like to have the opportunity to speak to the other
13 parties but I imagine we will be able to adjust schedule
14 accordingly. I think that an interim report is appropriate
15 and we can build it into the schedule. I think that the
16 parties would likely -- at least speaking for the Debtors --
17 we would like our responsive briefs to have the benefit of
18 the interim report. That's the purpose of filing the
19 interim report. But from the Debtor's perspective, we would
20 have no objection to sort of slotting Ms. Pillay's interim
21 report in between the opening briefs and the responsive
22 briefs. But, of course, I defer to the other parties as
23 well.

24 THE COURT: So, on this let me hear from Mr.
25 Hershey next, and then I'll hear from Mr. Ortiz and Ms.

1 Kovsky on this issue -- slotting in the examiner's interim
2 report.

3 MR. HERSHEY: Thank you, Your Honor. Just for the
4 record, Sam Hershey from White & Case for the Committee. A
5 few very quick points, Your Honor. First of all, I have to
6 respond to what Mr. Koenig just said about the parties
7 agreeing not to depose the Debtor's declarant. The schedule
8 actually provides, in Paragraph 2, that the Debtor's
9 agreement to provide a declaration is not an agreement that
10 they will produce the declarant for a deposition. It does
11 not say that we've agreed necessarily that we will not seek
12 a deposition. And actually all the parties' rights with
13 regard to seeking further discovery are preserved. I just
14 wanted to note that for the record. That's the first thing.

15 The second thing is -- I agree with Mr. Koenig
16 that I'd like an opportunity to speak with the parties. I
17 don't think I can adjust the schedule on the fly, but I do
18 think we will be able to reach a schedule that works for
19 everyone. It certainly is our intention to make the
20 schedule work for all parties and we'll work -- continue to
21 work in good faith to do that.

22 The last thing I want to say, just because I think
23 it's important, is the order appointing the examiner
24 specifically says in Paragraph 5 -- this is Docket Number
25 820 -- that nothing herein shall preclude the Debtors or the

1 Committee from concluding its -- oh, sorry -- from
2 conducting its own investigation regarding the Debtors,
3 including whether the estate has claims or causes of action
4 against any person or entity. And that clearly describes
5 this proceeding that we're discussing right now.

6 So, I just want to make clear there is no conflict
7 here. The Committee did retain the right, through the
8 appointment of the examiner, to continue to do this
9 investigation. As Your Honor observed, it's important to
10 the Committee's role in this case and I just wanted to put
11 that on the record.

12 THE COURT: You know, and I don't know whether
13 I've said this before or not but it should be obvious, when
14 I get fee applications, I'm going to look at whether or not
15 there was, in my view, unnecessary or unreasonable
16 duplication of effort. So, I'll just leave it at that. I
17 mean, s I've said, Mr. Hershey, I think to the fullest
18 extent possible, duplication should be avoided. But an
19 issue that, as I've expressed already, is an essential issue
20 for the Committee. I mean, every dollar that goes out is a
21 dollar less available for pro rata distributions.

22 So, I don't -- you know, I want the examiner's
23 interim report on this. I'm not shutting the Committee down
24 as to what they do, but there are likely to be other matters
25 that come up in this case where coordination and the

1 avoidance of unnecessary duplication is going to be
2 important. Let me just stop with that, okay?

3 MR. HERSHEY: Thank you, Your Honor. The
4 Committee, of course, is also committed not to wasting
5 estate resources in duplication and we'll work with the
6 examiner to avoid that happening in all cases.

7 THE COURT: Okay. Let me hear from Mr. Ortiz.

8 MR. ORTIZ: Good morning again, Your Honor. Kyle
9 Ortiz of Togut Segal & Segal on behalf of the Ad Hoc Group
10 of Custodial Account Holders. I'll note at the outset we're
11 very happy that Ms. Pillay is here and we're -- you know,
12 excited to see what she's going to do, and we're glad that
13 the examiner is on the scene.

14 But I don't necessarily think -- and look, we're
15 very happy to have her have a preliminary report on this
16 issue, but I would note when we're talking about --

17 THE COURT: You described it as an interim report.
18 Let's call it the interim report.

19 MR. ORTIZ: Interim report. But I would note, you
20 know, when I look at that same order that Mr. Hershey was
21 just speaking to in Paragraph 3-2 and the scope, it's an
22 examination as to why there was a change in account
23 offerings beginning in April of '22 from the earn program to
24 the custody service for some customers while others were
25 placed in withhold accounts. And I don't necessarily think

1 that there's complete overlap there -- because really that
2 seems to be a question of why did you create these programs,
3 which gets into an investigation of, you know, some of the
4 securities law issues and state investigations that were
5 going on. Whereas the question that we're trying to solve
6 with this scheduling order is -- the program was created;
7 why it was created is one issue, but it was created and it
8 was on contractual terms between these parties. And what do
9 those mean for who owns these assets?

10 And, you know, my biggest concern with where
11 things are going with this, including the examiner and
12 waiting for things, is, again, the same concern I had with
13 this whole scheduling order is -- we continue to get
14 stretched out. And, again, I think her input will be
15 helpful but I don't necessarily think that these issues are
16 actually the same issues.

17 THE COURT: Let me ask you this -- first, with
18 respect to the scope of the examiner's investigation. I
19 added a paragraph to the order and so the specific scope
20 that's defined in that order is not necessarily the last
21 word. Let me -- I won't go further than that.

22 MR. ORTIZ: I appreciate that, Your Honor.

23 THE COURT: There've been lots of pleadings,
24 writings, letters filed by pro se creditors who raised a lot
25 of serious issues that aren't necessarily within the precise

1 scope of what the Debtor, the Committee and the U.S. Trustee
2 set forth as the scope of the investigation. And that was
3 one of the reasons I added a paragraph to the order. It
4 gives Ms. Pillay an opportunity to confer with the parties
5 but also it's not necessary to come back to the Court and
6 say I think it's important to include, within the scope of
7 the examiner's investigation, the following.

8 But I guess the -- the question I have for you,
9 Mr. Ortiz, is how the -- Ms. Pillay's request to be able to
10 do -- to slot into the schedule an interim report 14 days
11 after the Phase I briefing. You know, this is a whole
12 expedited schedule. Lots of work for everybody to do. But
13 it didn't strike me that that's going to upset this overall
14 schedule of moving forward. I'd like your reaction on that.

15 MR. ORTIZ: Yes, Your Honor. I think -- as long
16 as it's not upsetting the schedule, again, I actually think,
17 you know, her input's going to be useful. She has resources
18 and more of a mandate than we probably do, so it'll be
19 helpful to have --

20 THE COURT: Her work's coming out of -- her work
21 is coming out of the estate's nickel and not -- you know,
22 which isn't --

23 MR. ORTIZ: Right. Exactly. So, I think it'll be
24 helpful. Our concern was just, you know, additional delay.
25 And if it slots in in a way that works, we're going to be

1 more than happy to have her participating.

2 THE COURT: I suspect that Ms. Pillay and her
3 counsel will be happy to hear from you about things you
4 think she should include in her focus for this interim
5 report, because you think that'll help you?

6 MR. ORTIZ: Yeah, I would note Ms. Pillay and her
7 counsel reached out to us shortly they appointed us -- they
8 did to many -- and I've been looking for input, and they've
9 been doing the right things so far. So, we're very happy,
10 again, to have her on the scene.

11 If I may, Your Honor, I wanted to make just one
12 really brief, maybe 15-second response to something that Mr.
13 Hershey said about the ordinary course?

14 THE COURT: Go ahead.

15 MR. ORTIZ: So, when he was talking about maybe
16 it'd be helpful to -- there's a lot of common facts and to
17 have a few buckets. Even if we ultimately determined, based
18 on some bellwethers, that you had common -- you know, five
19 sets of common facts, you still have 58,000 people and you
20 can't say, well, you kind of fit into this because that's
21 not really due process for those 58,000 other people. So, I
22 just wanted to note that and I won't belabor it any further,
23 Your Honor.

24 THE COURT: Okay. Ms. Kovsky?

25 MS. KOVSKY-APAP: Thank you, Your Honor. Deb

1 Kovsky, Troutman Pepper, for the Ad Hoc Group of Withhold
2 Account Holders. I do share Mr. Ortiz's concern about not
3 stretching the schedule but I don't think that slotting an
4 interim report in and adjusting our response briefs by a few
5 days is going to have a material impact on the overall
6 schedule.

7 Also, the withhold account holders are situated a
8 little bit differently from the custody account holders, and
9 I do think that Ms. Pillay's investigation into why withhold
10 accounts were created in certain states is directly relevant
11 to what we're doing. There are nine states that the Debtors
12 have referred to as the prohibited states, where they were
13 not permitted to custody coins on behalf of customers, where
14 they're still holding coins on behalf of customers. And we
15 think that Ms. Pillay's investigation in that regard is
16 absolutely critical to what we're doing here. So, we
17 absolutely welcome her interim report and would be very much
18 in favor of finding a way to slot that in.

19 THE COURT: All right, thank you. Okay. Mr.
20 Herman? You've been waiting patiently.

21 MR. HERMAN: Thank you, Your Honor. Emanuel
22 Herman, pro se, Celsius LLC creditor and the admin of the
23 Worldwide Earn Customer Group, which has 2,850 members
24 representing hundreds of millions of dollars in assets. I
25 wanted to clarify for this Court and the parties here that

1 our group has switched from non-accredited earn to a space
2 for all earn customers worldwide.

3 I apologize for sending my most recent filing last
4 night in advance of this hearing. I do think it raises some
5 important questions around insider withdrawals, and it took
6 me to the very last minute to find that information and get
7 it to this Court. I also apologize that I made some
8 typographical errors in my declaration and I'll be filing an
9 amended version soon. But I did want to get it into your
10 hands before this hearing. So, I do have a few comments
11 relevant to this hearing and then I have some questions I
12 hope we can go back and forth on. If anything's irrelevant,
13 please feel free to interrupt me or, you know...

14 So, first, I want to welcome Ms. Pillay to this
15 case. I want to second what the U.S. Trustee's Office,
16 Shara Cornell said and what Ms. Pillay said. As an earn
17 customer and a leader of that group, the largest customer
18 group that Celsius has, I believe it would be best to have
19 at least the examiner's interim report in hand before these
20 cases move forward. Earn customers are the ones who will
21 get less of a distribution if these claims prevail.

22 I also agree with Deb Kovsky from the Withhold
23 Group as well that Ms. Pillay's investigation of why this
24 happened is critical to what I am planning to do as well.
25 So, I just wanted to get that out of the way. I'll keep my

1 statements as brief as I can, and then I do have a few
2 questions.

3 So, first, I want to commend Kirkland and the
4 Debtors for whatever role they may have played behind the
5 scenes to facilitate the departure of Alex Mashinsky to step
6 down. I'd encourage them to continue working with Mr.
7 Mashinsky to encourage him to stop pushing plans outside the
8 process.

9 We're here today because a small group of
10 customers has decided to litigate against the rest of us to
11 get all of their coins back. I think they have a pretty
12 good case -- that their coins are not property of the
13 estate, and I think earn customers, such as myself, also
14 have a pretty good case -- our coins are not property of the
15 estate, as I outlined in my objection and in my supplemental
16 filing and declaration from last night, which will be
17 docketed soon.

18 Since it seems that we are moving to litigation, I
19 have decided to file my own adversary proceeding with both
20 contract and constructive trust claims. I would like to
21 cooperate with the parties and this Court to minimize the
22 burden on the Court and the other parties. I would like to
23 ask for the same relief as the Ad Hoc Committee's, including
24 procedural relief and the acceptance of electronic service
25 for me and any other pro se parties who may file adversary

1 proceedings. Would that be acceptable to the parties or to
2 you, Your Honor?

3 THE COURT: I'm not going to -- I'm not going to
4 answer the question on the fly, Mr. Herman.

5 MR. HERMAN: That's totally fine. I'm happy to
6 send a motion or something, if that's what you would prefer.
7 Okay, so now I have some questions. Please feel free to not
8 answer or whatever -- whatever you --

9 THE COURT: I usually don't have to answer
10 questions but go ahead, Mr. Herman.

11 MR. HERMAN: Okay. I guess one question is just
12 is there a deadline by which I need to file a lift stay or
13 adversary proceeding or that the Court would prefer that I
14 file to sort of make it easier to get along with all of
15 these other cases?

16 THE COURT: You know, again, that's -- there's no
17 statute of limitations on you at this stage, but there are a
18 lot of moving parts to this case. I think from -- I'm
19 making no rulings at this stage but the earn account
20 holders, by virtue of the Debtor's terms of service, are in
21 a far different position than the issues about the custody
22 account holders and the withhold account holders.

23 MR. HERMAN: Understood.

24 THE COURT: There already is one written opinion
25 that I have on the -- I think Fishberg's motion to lift the

1 stay. And I don't have my opinion in front of me, but it
2 certainly addressed some of -- I think some of the issues
3 that you're raising now. I think that the...

4 CLERK: Judge? It seems like he froze.

5 MR. HERMAN: It seems it, yeah.

6 CLERK: All right. Hold on...

7 THE COURT: -- in one way or the other about any
8 of that. It's just that I think it -- certainly I
9 recognized from the start that the earn accountholders were
10 differently situated from the issues for the custody
11 accountholders or the withhold accountholders. I'm
12 determined -- I made this clear really from the very
13 beginning of this case -- to try and resolve this is-it-
14 property-of-the-estate issue. And that's why we're heading
15 down this road and I'm appreciative that the -- the main
16 parties who've teed up this issue have come to an agreement
17 on a path forward and I'm trying to honor -- honor that.

18 So, I can't -- without seeing your papers, Mr.
19 Herman, it's very hard for me to assess where that comes
20 out, whether the Committee has objections to it, whether the
21 Debtor has objections to it, etc. So, I don't know. I --
22 the one thing I'll tell you, Mr. Herman. Everything you
23 have filed in this case, I have read it and considered it.
24 If you file motions, I will -- will get it on the agenda
25 for, you know, one of the omnibus hearings and -- as with

1 everything I do, I try to give fair consideration and follow
2 the law. So, I can't -- without seeing what it is -- your,
3 your request for relief and what you're filing, I can't
4 really react to it now.

5 I'd just say, you know, there are lots of
6 aggrieved parties here and it's a real concern to me. But
7 that doesn't necessarily translate into the relief that you
8 may seek. So, let me just stop with that. I'll have to see
9 what you file.

10 MR. HERMAN: Thank you, Your Honor. I have only
11 two more short questions and then I'd like to let other
12 parties go. So, one question is just if I can file on
13 behalf of similarly situated earn customers worldwide and
14 those who've paid off loans or if I would just be filing for
15 myself?

16 THE COURT: I think the issue of representing
17 others is something I don't think you're in a position to
18 do. So, I think you can file for yourself but, you know,
19 unless something is certified as a class action -- I did not
20 ask Mr. Ortiz or Ms. Kovsky the issue about standing of ad
21 hoc committees but maybe I'll briefly touch on that. But I
22 think the way the stipulation's been drafted deals with some
23 of the concerns I had there. But I don't want to tell you
24 you're on your own but -- you know... You can file for
25 yourself. I'm very mindful that arguments you make may

1 apply to a much broader swath of people. I'm mindful of
2 that when I rule on things. When I denied Mr. Fishberg's
3 motion to lift the stay, I was fully cognizant of -- that he
4 was not alone in expressing the positions that he expressed
5 and I just followed the law with respect to it. So, I don't
6 know that I could say more than that.

7 MR. HERMAN: Okay. And my last question actually
8 -- I'm just wondering if Kirkland has had a chance to review
9 in my filing my requests for information from the Debtor,
10 because I'd be willing to work with them on discovery so
11 that I can report back on where we can find common ground in
12 advance of the October 20th hearing. So then hopefully I
13 don't have to ask for an order on --

14 THE COURT: Let me ask --

15 MR. HERMAN: -- discovery.

16 THE COURT: Can someone who's appearing for the
17 Debtor identify with whom Mr. Herman should speak to try and
18 resolve any discovery issues? To get it on the record now,
19 so he knows specifically with whom he should speak.

20 MR. KOENIG: Thank you, Your Honor. Chris Koenig
21 for the Debtors. If Mr. Herman would reach out to me in the
22 first instance, we can direct him to the appropriate folks.
23 My email address is in the signature block of all of the
24 Debtor's filings.

25 THE COURT: Okay. And I'm sure you will try and

1 promptly respond to Mr. Herman so he can -- he knows with
2 whom to engage, okay?

3 MR. KOENIG: Of course, Your Honor. Of course,
4 Your Honor. And just very briefly, Your Honor. You were
5 speaking to Mr. Herman earlier. You mentioned your ruling
6 on Mr. Fishberg and your video and audio froze for about 30
7 seconds. So, I apologize to make you go back but I just
8 wanted to make sure that all the parties understood what you
9 were trying to say there.

10 THE COURT: What I said was -- and I think I had
11 the name right -- Mr. Fishberg filed a motion to lift the
12 stay. He wanted to proceed with his State court action
13 against Celsius. He is or was, as I recall it, an earn
14 accountholder. And I denied his motion to lift the stay.
15 It's in a written opinion on the record. And so that was
16 really what I was pointing out.

17 So, you know, the earn -- I guess the point that I
18 was trying to make is the earn accountholders are in a
19 different position than the arguments made by the custody
20 and withhold accountholders. Celsius' terms of use provide
21 that when somebody deposits crypto assets, they transfer all
22 right, title and interest to the debtor. Whether there's
23 some argument that that shouldn't be enforced or it's
24 ambiguous for some reason, I'm not -- I'm not getting into
25 for now. I'm not making any ruling about any of that. I'm

1 just -- I was just pointing out that I think that earn
2 accountholders are in a different position than the
3 arguments made by the custody and withhold accountholders.

4 And I really do appreciate your pointing out to me
5 if my connection froze up, but that's it.

6 MR. KOENIG: Thank you, Your Honor. Just in
7 response to what Mr. Herman said -- so, we certainly agree
8 that -- what we've tried to do is to deal with custody and
9 withhold on an expedited basis. The earn issues will be
10 addressed at the appropriate time. The Debtors have filed a
11 motion for permission to sell stable coin. That -- that
12 motion has been adjourned to November 1st. But I think that
13 many of the issues that Mr. Herman is discussing is likely
14 to come up as part of the Debtor's presentation in support
15 of that motion. So, I just want to point Mr. Herman to
16 that. That these issues of the custody and withhold
17 accountholders, on the one hand, will be addressed in this
18 schedule, but the earn accountholders, it is not that the
19 Debtors are delaying those matters either. There are
20 already matters that are likely to come before the Court
21 with respect to earn accountholders, and the Debtors intend
22 to move forward on those issues as well.

23 MR. HERMAN: Okay, but I -- but I -- sorry, go
24 ahead.

25 THE COURT: Just a minute, Mr. Herman. Mr.

1 Koenig, one -- and I understand that the stable coin sale
2 motion is not on for today. But let me ask you just a
3 couple of questions. And, again, the schedules, I didn't
4 have a chance to read through all of them.

5 What's the total value -- approximate value,
6 because I know it's a moving -- less a moving target with
7 stable coin than with others -- what's the approximate value
8 of the stable coin that the Debtor is holding?

9 MR. KOENIG: It's tens of millions of dollars,
10 Your Honor. I don't have the figure in front of me but I'd
11 estimate it around \$50 million, you know, give or take.

12 THE COURT: I thought that the motion put a higher
13 value. Again, I don't --

14 MR. KOENIG: Perhaps --

15 THE COURT: I thought it was like a \$77 million --

16 MR. KOENIG: It's certainly referenced in the
17 motion, Your Honor. I just don't have the figure in front
18 of me.

19 THE COURT: Look, I have to say that when I saw
20 that motion -- and, again, it's not for today and I'm not
21 ruling on it -- one of my concerns was, with caveats, your
22 colleagues said that they hoped that the case would result
23 in a plan for in-kind distributions. But if the stable coin
24 is sold, there's not going to be an in-kind distribution of
25 stable coin from those who actually deposited with it. So,

1 that was an initial reaction I had. Did -- that doesn't go
2 to the legal issues of are the stable coin property of the
3 estate, and whether the Debtor can, should, must at the
4 present time sell it. You've now made a motion for approval
5 of bidding procedures, whether the case has taken a
6 different turn as a result of that, whether -- and I
7 understand that motion, again, not on for today, reflected
8 consultations and a parrot agreement with the Committee
9 about a path forward.

10 So, you know, this -- the ground has shifted in
11 this case from the time you filed it until today, and I'm
12 fully aware of that. I'll deal with the stable coin motion.
13 The U.S. Trustee had an objection. I think the Texas
14 security regulator had an objection to it. We'll -- we'll
15 see where we are. That's not on the agenda for today.

16 MR. KOENIG: Thank you, Your Honor. Just for the
17 record -- I'm sorry to interrupt you. The motion reflects
18 as \$23 million of stable coin as of the date of the motion,
19 just for the record.

20 THE COURT: All right, okay. Thank you very much
21 for correcting me. Mr. Herman?

22 MR. HERMAN: Oh, I'm sorry, Your Honor.

23 THE COURT: I paused too long. Mr. Herman,
24 communicate with Mr. Koenig. He'll promptly identify with
25 whom you should speak on your discovery issues, okay?

1 MR. HERMAN: Thank you, Your Honor. I just wanted
2 to make one other quick comment, which is that I agree that
3 our claims are different, particularly with constructive
4 trust. I did want to note that under 541(d), for people who
5 borrowed -- who took out loans, there may be actual contract
6 claims, which was outlined in my filing, which may be
7 similar to the -- to Deb's group of -- Ms. Kovsky's group of
8 withhold accountholders and that we may have actually signed
9 contracts where a plain reading of the contract says that
10 the coins are our property.

11 Of course I haven't filed anything, of course, so
12 I'm just noting that for information of the parties --

13 THE COURT: Well, let me stop you there. Well,
14 okay, all right.

15 MS. COHEN: Your Honor, this is Hollace Cohen. Do
16 you hear me?

17 THE COURT: Yes, go ahead.

18 MS. COHEN: Apropos the comments that were just
19 made by Mr. Herman --

20 THE COURT: Remind me who your client -- remind me
21 who your client is.

22 MS. COHEN: My client is Vincent Goetten. And he
23 is a borrower who paid off his loan. In fact, tried to do
24 it just before the pause. And he was told that he would get
25 his bitcoin that he pledged put into a custodial account.

1 It then occurred to the Debtor seven days after the loan was
2 repaid that, in fact, he was from a prohibited state. And
3 so they put his bitcoin into an earn account. So there --
4 we are very much of the view that our client is entitled to
5 be treated just as a custodial account would be. And we're
6 kind of surprised that the Debtor did not consider putting
7 his bitcoin into a withhold account.

8 But the bottom line is there are very different
9 types of earn accounts, and these are certainly, you know,
10 important issues that have yet to be addressed.

11 THE COURT: A lot -- there are a lot of important
12 issues, Ms. Cohen, that haven't been addressed and are going
13 to take time to address. If you want to file a motion, file
14 a motion and I'll deal with it.

15 MS. COHEN: Okay. I just wanted to bring it to
16 your attention.

17 THE COURT: Thank you. All right, I don't want to
18 -- who hasn't spoken yet? I'm trying to see -- are there
19 hands -- whether there are hands raised or not.

20 MR. ORTIZ: Your Honor, I just know -- my hand's
21 only raised to address your standing question, if you want
22 us to. Otherwise, I --

23 THE COURT: Yeah, go ahead.

24 MR. ORTIZ: Sure. So, at the last hearing you
25 asked us to address whether or not we had standing as an ad

1 hoc group to bring the complaint. There's really two places
2 that we look. It's Rule 2019 and Rule 7017. I'll start
3 with 2019. And just note that I don't think there's any
4 question that our 70 clients all have standing and that 2019
5 doesn't allow you to have a single counsel. Whether that
6 counsel is an entity and bring an adversary complaint is a
7 different question. I think when I read the rules, the
8 answer is yes but I will admit to you that I don't have a,
9 you know, solid case to say that.

10 So, we've also looked at Bankruptcy Rule 7017,
11 which incorporates Federal Rule 17(a)(3), which allows a
12 party to ratify. And there's even Second Circuit case law
13 from just last year in Fund Liquidating Holding LLC v. Bank
14 of America Corp, which is at 991 F3d. 370, where at 386, the
15 Court holds that Article III is satisfied as long as a party
16 with standing to prosecute the specific claim in question
17 exists at the time the pleading is filed, which I think we
18 clearly have here. If that party, the real party interest
19 is not named in the complaint, then it must ratify, join or
20 be substituted into the action within a reasonable time.

21 I think the reasonable time here, we've actually
22 built that reasonable time into the scheduling order. So,
23 it's two days after the ruling on Phase I. And one of the
24 reasons that it's two days after the ruling on Phase I is if
25 Phase I is successful, we don't really need to go forward

1 with our complaint because, in our view, the Debtors ask for
2 very much the same relief in the first instance of whether
3 or not it's property of the estate. There are questions
4 that come from that but that was all our complaint asked for
5 was that initial ruling.

6 So, if we get to that point and we need to ratify,
7 we will have our clients ratify the complaint, consistent
8 with Rule 17(a)(3), Your Honor.

9 THE COURT: Give me a second.

10 MR. ORTIZ: Of course, Your Honor.

11 THE COURT: More than a second. I'm searching for
12 something. How are the bellwether clients going to be
13 identified?

14 MR. ORTIZ: That is -- my understanding is that
15 each group, and the committee, and the Debtors kind of
16 identify folks. Again, I don't necessarily think if we
17 limit this to ordinary business terms, and safe harbor, they
18 even need bellwethers. I think you really only need
19 bellwethers if you get into ordinary course of business.

20 THE COURT: Let me stop you there, because I've
21 decided that ordinary course of business should be included.

22 MR. ORTIZ: Okay.

23 THE COURT: It's still a (indiscernible) issue but
24 it's -- I do believe it should be included. And that's, you
25 know ... and that will require, if we get to phase two, it

1 will require selection of the bellwether parties. Have you
2 discussed how that's to be done? Is that done in
3 consultation between the parties to these disputes?

4 MR. ORTIZ: Yes, Your Honor. Of course, I'll let
5 the other parties speak as well. But the concept is, we
6 would all agree that there's a number, and that we all get
7 to choose a certain amount within that number of the
8 bellwethers.

9 THE COURT: Like, I mean ... from the bank -- you
10 know, I inherited Motors Liquidation GM from Judge Gerber
11 when he retired, and they were overlapping issues with what
12 went on in the District Court, which is just about at an
13 end. But you know, the selection of bellwether parties can
14 be very important, because you try and get a range of people
15 who, when you resolve their disputes, it pretty well has
16 everything else fall in line with it. So, I do think that's
17 important. We'll see where we get to after phase one. But
18 I do think -- I would include the bracketed language, in
19 paragraph 10, of phase two, is the language where there was
20 no agreement; the ordinary course of business defense, under
21 547(C)(2)(a) of the Bankruptcy Code. So, I would approve a
22 stipulation with that included.

23 I think the thing -- let me get the last few
24 parties, Mr. Ortiz. Mr. Nunn, go ahead.

25 MR. NUNN: Your Honor, thank you for allowing me

1 to speak today. I really just have, just one question, that
2 I think a lot of people have been asking to us unsecured
3 creditors. In light of the recent news, Mashinsky and
4 others, have withdrew tens of millions of dollars, prior to
5 the bankruptcy filing, and prior to their departure from the
6 company. Why isn't there a clawback order to get that money
7 back, especially considering that Mashinsky wanted to sell,
8 you know, \$50 million worth of our own assets to fund
9 ongoing operations; which we still don't have
10 (indiscernible) into. Why is it \$15 million a month, or
11 whatever it is? It's a lot of money that just keeps going
12 out the door. So, that's my question. Thank you.

13 THE COURT: I have a feeling that's something the
14 examiner will be looking at, Mr. Nunn. So, I rule on
15 disputes that are brought to me in the form of motions,
16 pleadings, things of that nature. You're raising very good
17 questions. It, frankly, was one of the things that led me
18 to ask the question at the outset, as to whether Chris
19 Ferraro had withdrawn funds from the Debtor within the 90
20 days. For insiders, the lookback period is a year, but for
21 this purpose today, I just limited it to the 90-day issue.
22 But you're raising very good questions.

23 Ms. Barstow?

24 MS. BARSTOW: Yes, hello. I'm just, I put in a
25 motion for the USBC earn customers be considered secured

1 creditors. I'm just wondering, is that going to be heard
2 today, or will you be scheduling a time for that to be
3 heard?

4 THE COURT: It's not today. It'll get put on the,
5 you know, on the agenda for an upcoming hearing; I don't
6 know which one.

7 MR. KOENIG: Your Honor, it's Chris Koenig for the
8 Debtors. That's scheduled for November 1. It was
9 rescheduled. There was a notice that we filed a few days
10 ago. It was included as an adjourned matter. It will be
11 part of the agenda for November 1, and we'll be sure to
12 include it in the agenda that we filed for that hearing.

13 THE COURT: Well, there's your answer, Mr.
14 Barstow, okay.

15 MS. BARSTOW: Okay, thank you.

16 MR. KOENIG: You're welcome.

17 THE COURT: It won't get lost in the shuffle,
18 okay.

19 MS. BARSTOW: Okay.

20 THE COURT: Mr. Crews?

21 MR. CREWS: Thank you, Your Honor. It's Cam
22 Crews, pro se Creditor. I had filed an omnibus objection,
23 filing 914, which may have been obviated by this filing, the
24 988 plan. But my filing did include an Exhibit A, which
25 addresses some of the issues between custody and earn; which

1 I think are important in terms of identifying substantive
2 issues. So, I wanted to just see whether it would be
3 appropriate to outline that briefly, or know when best to
4 bring that your attention.

5 THE COURT: I'll give you a chance to just briefly
6 -- I apologize, but I haven't read your filing. So, go
7 ahead. And I will, but go ahead.

8 MR. CREWS: So, I think the most important aspect
9 of it is what I included in Exhibit A, which is a blockchain
10 investigation that I performed myself, which attempted to
11 resolve the expanded coin report, filing 811, which the
12 testimony of the chief security officer, 812. So, I was
13 able to identify the custody wallet; is, essentially, all
14 the funds are held within a single wallet within the custody
15 workspace. And also, a major wallet within the retail earn
16 space. And my investigation showed two main things, which I
17 am hoping the examiner will also be able to look at. Funds
18 that are going into Celsius wallets would always go into the
19 retail workspace first. So, there was a custody workspace,
20 but they would only be sent there later, from time to time.

21 And there was an admission from the head of
22 technology founder today, that all transfers between custody
23 and earn occur off-chain; which means that the underlying
24 assets were not transferred within the regular course of
25 business. So, that's just something that I think is very

1 important to the issues between earn and custody, be
2 different, and as well, would affect the loans accounts.

3 Another major finding is that people that were
4 depositing and were induced to deposit due to referral to
5 bonuses, that they were offered, which the Debtor had no
6 ability to fulfill, based on their solvency. These deposits
7 were going directly out the door as withdrawals, in the same
8 day. And I included a diagram showing millions of dollars
9 in stable coin going into Celsius wallets, making one hop,
10 and then being distributed to customers leaving; who were
11 being made whole because they were also taking their
12 earnings with them, if they had any.

13 So, essentially, it's raising major issues about
14 the behavior of the Debtor in their final days, and just
15 showing the flow of funds. The filing also points out
16 questions of ownership with regard to the terms of service,
17 which were changed in July 2021; where, previously, the
18 terms of service asked everybody who was using the service
19 to affirm that you hereby represent and warrant to us, that
20 any digital asset used by you in connection with your
21 Celsius wallet, is owned by you. This is something you had
22 to have agreed to do prior to July 2001.

23 Subsequent to that, they released a change and
24 said, you transfer all rights and title of digital assets to
25 Celsius. But they removed the date changed from that

1 agreement. And I would argue they did not collect, posit a
2 cent from their customers; that this change had been made.

3 And there are substantial issues with what they've
4 changed here, because the next question would be, with
5 regards to tax liabilities, if you've transferred title,
6 that would be a disposal event under the IRS tax code. But
7 they would present your tax forms as if you owe all taxes of
8 the customer.

9 They've also presented that using Celsius is a way
10 to defer your tax responsibilities. So, essentially, they
11 were caught between two ways. Like, how can they claim
12 title, while allowing you to defer your taxes. So, that's
13 something that the Debtor really should address. It would
14 really -- nobody would want to use their service if they're
15 going to incur these tax liabilities by transferring title
16 of their clients. It would completely undermine the purpose
17 of using their service.

18 And there's also Exhibits B through E, show screen
19 shots of their website that constantly refer to, you're able
20 to access your coins at any time, keep them safe with
21 Celsius. They're always using the term, 'your coins.' And
22 those terminologies did not change at all after the 2001
23 change.

24 So, I think it's just really important to identify
25 what I would classify as deceptive trade practice. And I

1 think there could be very constructive arguments that kind
2 of outline that. That's the brief summary.

3 THE COURT: What is the ECF Docket number of your
4 filing?

5 MR. CREWS: It's 914, Your Honor.

6 THE COURT: Thank you very much. And I will make
7 a point of going over it. I apologize, I did not read it
8 before this hearing.

9 MR. CREWS: Wonderful. Thank you so much.

10 THE COURT: Okay. All right. Anybody else who
11 has not been heard yet wish to speak? Ms. Barstow, I've
12 heard from you already. You need to put your hand down.
13 Thank you.

14 All right, here's where I want to leave it for
15 today. I agree that Ms. Pillay, should be put into the
16 schedule to file an interim report within 14 days after the
17 initial briefing. Here's what I would ask for, because the
18 stipulation needs to be revised. Already, I pointed out,
19 right at the start, that paragraph 15, with respect to
20 rights to appeal, that's not me -- and I can't approve a
21 stipulation that says it's immediately appealable. So, we
22 talked about that earlier, so that needs to be changed.

23 But I believe -- so, in terms of the unresolved,
24 previously unresolved issue in paragraph 10, I agree with
25 the Debtor that ordinary course of business defense under

1 547(C) (2) (a) needs to be added to the stipulation.

2 You know, the other comment I would make --
3 obviously, we'll have to see how -- what happens with phase
4 one; phase two may or may not be important after that. Let
5 me see ... Mr. Koenig, under this schedule, you all wanted a
6 trial in November. Is that correct?

7 MR. KOENIG: That's right, Your Honor. There's a
8 bracketed date on page 8 for the hearing on the phase one
9 issues and the Debtor's motion. We were targeting November.
10 Obviously, we'll have to adjust the schedule based on
11 slotting in Ms. Pillay's interim report.

12 THE COURT: Right. Let me just flip down my
13 calendar.

14 MAN 1: It's our Thanksgiving present for you,
15 Your Honor.

16 MR. KOENIG: Your Honor, I'm just sort of counting
17 out days, assuming the order was entered today. The
18 declaration would be filed on October 21; opening briefs
19 would be due ten days after that, which I believe would be
20 the 1st of November. And I believe Ms. Pillay suggested
21 that 14 days after that date would be the appropriate date
22 for the interim report, so just counting out, that's
23 November 15. We would need to figure out how to slot in the
24 responsive briefs from the parties, to deal with, you know,
25 making sure that everybody has an opportunity to read Ms.

1 Pillay's interim report.

2 You know, perhaps ten days after that would be
3 appropriate; although, of course, we have the Thanksgiving
4 holiday in that period. So, looking at a calendar, I
5 suspect that that hearing will be in late November or early
6 December, just sort of counting out the days on my calendar
7 live at the hearing.

8 THE COURT: All right, let me ...

9 MR. KOENIG: And by all means, if I miscounted
10 days somewhere, one of the other parties should interrupt me
11 and ... And we do already have an omnibus hearing on November
12 30, but I suspect that Your Honor would prefer to keep this
13 separate from the omnibus dates, as we've been trying to do
14 on custody and withhold issues, generally. But I should
15 inquire as to what Your Honor would prefer.

16 THE COURT: Well, I just, I believe it is going to
17 be necessary to move the November 30 omnibus hearing day.
18 Just give me a second. I've got to look at two different
19 calendars -- or three different calendars -- on that issue.

20 All right. We're going to move the omnibus
21 hearing date to December 5th at two o'clock. And we're
22 going to tentatively schedule the hearing on Phase I for
23 Wednesday, December 7, and Thursday, December 8. At this
24 date, I don't know whether those two days are going to be
25 enough, but that's what I'm blocking out for now.

1 MR. KOENIG: Wonderful. Thank you, Your Honor.

2 THE COURT: Okay. Deanna, you -- my courtroom
3 deputy is listening to all of this, and so she will make
4 those notes so we're -- just so we're clear again, I'm
5 moving the omnibus hearing -- Celsius omnibus hearing date
6 of November 30, Wednesday, November 30,

7 MR. KOENIG: To December 5th at 10:00 A.M.?

8 THE COURT: No, December 5th at 2:00 p.m. because
9 I have --

10 MAN: Oh, I'm sorry. Thank you, Your Honor.

11 THE COURT: -- a hearing at 9:00 a.m. that day.

12 MR. KOENIG: Okay. And the Debtors will file a
13 notice on the docket of that adjournment.

14 THE COURT: Correct.

15 MR. KOENIG: Okay.

16 CLERK: And sorry, judge, for the Phase I on
17 December 7th and 8th, did you want to start at 9:00 a.m.
18 both days?

19 THE COURT: We'll start at 9:00 a.m. days, Deanna.
20 Thank you.

21 CLERK: Thank you.

22 THE COURT: You know, we'll -- let me pick another
23 date here, hold on. Tuesday, November 22 at 10:00 a.m.
24 we're going to have a case management conference with -- it
25 will be in both the main case and the ad hoc adversary,

1 specifically focused on the hearing scheduled for December.

2 So -- I'm not quite sure how to describe it in the agenda,
3 but let's do the -- on the -- Tuesday the 22nd at 10:00 a.m.

4 MR. KOENIG: Thank you, Your Honor. We'll reflect
5 that in the revised stipulation of status conference
6 perhaps, on the 22nd at 10:00 a.m.

7 THE COURT: That's fine. And, you know, if there
8 are issues that arise between -- that somebody believes you
9 need the assistance of the Court, you'll get hearings. You
10 call -- you know, you try and agree if there are
11 disagreements. Call Deanna. You'll get a hearing date.
12 I'll give expedited conference dates as necessary. I want
13 to keep this moving along. Okay?

14 MR. KOENIG: Thank you, Your Honor. So we will go
15 back with the other parties, revise the stipulation in
16 accordance with your rulings today, and we'll file a revised
17 stipulation and scheduling order as soon as possible,
18 hopefully this afternoon.

19 THE COURT: Okay. Thank you very much, Mr.
20 Koenig.

21 MR. KOENIG: Thank you, Your Honor.

22 THE COURT: All right. Thank you very much,
23 everybody. We are adjourned.

24 (Whereupon these proceedings were concluded at
25 11:28 a.m.)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: October 10, 2022